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Thomas R. Betancourt
Administrative Law Judge

December 19, 2017

VIA EMAIL

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Matawan, NJ 07747

**Re: F.H. and M.H. on behalf of J.H. v. West Morris Regional High Board of
Education
OAL Dkt. Nos.: EDS 10706-17**

Dear Counsel:

Enclosed please find an Order entered in the above-referenced matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas R. Betancourt".

THOMAS R. BETANCOURT
Administrative Law Judge

TRB/db
Encl.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

OAL DKT. NO. EDS 10706-17

AGENCY DKT. NO. 2017-26311

F.H. and M.H. ON BEHALF OF J.H.,

Petitioner,

v.

WEST MORRIS REGIONAL HIGH BOARD OF

EDUCATION,

Respondent.

Julie Warshaw, Esq., for Petitioner (Warshaw Law Firm, LLC, attorneys)

Jodi S. Howlett, Esq., for Respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorneys)

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Due Process Petition on June 5, 2017, with Office of Special Education Programs (OSEP) in the New Jersey Department of Education (DOE). OSEP transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL) where it was filed on July 28, 2017.

A prehearing conference was held on August 11, 2017, and a prehearing Order was entered on the same date.

Petitioner filed a motion for summary decision on September 20, 2017. Said motion is held in abeyance pending my decision on the present motion for leave to amend the due process petition, which was filed with the OAL October 23, 2017.

Leave was granted to amend the due process petition by Order dated November 14, 2017; and, a briefing schedule for the summary decision motion was established.

Respondent filed its reply brief to Petitioner's summary decision motion on December 5, 2017. Petitioner filed a sur-reply brief on December 14, 2017.

LEGAL ANALYSIS

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted).

In the instant matter the parties dispute the classification of J.H. Petitioner maintains that J.H. should be classified as "Specific Learning Disability". Respondent's position is that J.H. should be classified as "Emotionally Disturbed". This alone requires a hearing.

For the foregoing reasons, I **CONCLUDE** that the motion for summary decision should be **DENIED**.

ORDER

Petitioner's motion for summary decision is **DENIED**.

December 19, 2017
DATE



THOMAS R. BETANCOURT, ALJ